



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 19 2013.

James Hull

Augusta, GA 30904-4349

RE: MUR 6576
James Hull

Dear Mr. Hull:

On May 16, 2012, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on September 10, 2013, voted to find no reason to believe with respect to certain allegations and closed the file.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kimberly Hart, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a long horizontal flourish extending to the right.

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6576

RESPONDENTS:

James M. Hull
Bernard S. Dunstan, Jr.
Barry L. Storey, president of Barry L. Storey
Family Investments LLLP
Margaret D. Dunstan, trustee to the J.R. Dunstan
Family LLC, as successor to J. Richard Dunstan

I. INTRODUCTION

This matter was generated by a complaint filed by Scott W. Paradise. *See* 2 U.S.C. § 437(g)(a)(1). Wright McLeod was a Republican candidate for Georgia's 12th congressional district in 2012. His principal campaign committee is Wright McLeod for Congress ("McLeod Committee") and Cameron Nixon is its treasurer. The Complaint alleges, in part, that the McLeod Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by:

- accepting excessive in-kind contributions through its use of office space provided at less than the usual and normal charge in violation of 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f);
- failing to properly report excessive in-kind contributions of office space in violation of 2 U.S.C. § 434(b)(3)(A); and
- accepting contributions from a limited liability corporation in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 110.1(g).

The Complaint also alleges that four individual respondents — Bernard S. Dunstan, Jr., Margaret D. Dunstan (trustee and member manager of J.R. Dunstan Family LLC), Barry L. Storey (president and general equity partner of Barry L. Storey Family Investments, LLLP), and

1 James M. Hull — made excessive in-kind contributions to the McLeod Committee by
2 contributing office space at less than fair market value. All respondents deny the allegations.

3 As detailed below, the Commission found no reason to believe (1) that any respondent
4 violated 2 U.S.C. §§ 441a(a)(1)(A) or 441a(f) by making or receiving excessive in-kind
5 contributions. Further, The Commission exercised prosecutorial discretion and dismissed the
6 potential violations that (1) the McLeod Committee or J.R. Dunstan Family LLC violated
7 2 U.S.C. § 441b(a) by making or receiving corporate contributions; and (2) the McLeod
8 Committee violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 110.1(e) by failing to properly
9 report contributions made by Barry L. Storey Family Investments, LLLP.

10 **II. FACTUAL AND LEGAL ANALYSIS**

11 **A. Alleged Prohibited and Excessive In-Kind Contributions**

12 **1. Alleged Prohibited Contribution Under 2 U.S.C. § 441b(a)**

13 The Complaint and the responses show that the McLeod Committee rented office space
14 for its campaign headquarters at 3632 Wheeler Road in Augusta, Georgia. *See, e.g.*, Compl. at 2;
15 James Hull Resp. at 1 (May 5, 2012) (“First Hull Resp.”). The Complaint alleges that the
16 McLeod Committee reported to the Commission in-kind contributions of \$250 for “rent” in
17 January, February, and March 2012 from four individuals — Bernard Dunstan, Margaret
18 Dunstan, Hull, and Storey. Compl. at 2, Ex. C. The Complaint also claims that public records
19 show that the office space is owned by a limited liability company (“LLC”), and asks the
20 Commission to determine whether the use of the office space was donated by the individuals or
21 the LLC. Compl. at 2.

1 In response to this allegation, Respondents represent that just one of the four owners of
2 the property is an LLC. First Hull Resp. at 2, ¶ 2, Attachments.¹ Margaret Dunstan's share of
3 the property is held by J.R. Dunstan Family LLC, which is one of the four tenants-in-common
4 that owns the building. *Id.* at 2, ¶ 2. Margaret Dunstan is "the member manager of the [LLC,
5 who] is entitled to receive all rents from its assets." *Id.* It therefore appears that the J.R. Dunstan
6 Family LLC owns 25% of the office space, and not 100% as suggested by the Complaint.

7 In its April 2012 Quarterly Report, the McLeod Committee disclosed in-kind
8 contributions of \$250 from Margaret Dunstan in January, February, and March of 2012. *See*
9 April 2012 Quarterly Report. Given the Dunstan Family LLC's ownership interest in the
10 property, Margaret Dunstan's reported contributions raise the issue of whether *the LLC* made
11 prohibited corporate contributions to the McLeod Committee. Under the Act, corporations may
12 not make contributions to federal candidates. 2 U.S.C. § 441b(a). An LLC is treated as a
13 corporation for purposes of the contribution limits if it has publicly traded shares or if it elects to
14 be treated as a corporation with the Internal Revenue Service ("IRS") for federal tax purposes.
15 *See* 11 C.F.R. § 110.1(g)(3). If, instead, an LLC elects to be treated as a partnership, or makes
16 no election at all, then the LLC is treated as a partnership for purposes of the contribution limits.
17 *Id.* § 110.1(g)(2). In that case, a contribution from an LLC is attributed to the LLC and to each
18 of its "partners," *id.* § 110.1(e), unless the LLC has only "a single natural person member," in
19 which case the contribution is attributable to just that person, *id.* § 110.1(g)(4); *see also*
20 Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed.
21 Reg. 37,397, 37,399 (Jul. 12, 1999) (explanation and justification for 11 C.F.R. § 110.1(g)).

¹ The First Hull Response was subsequently adopted by respondents Barry L. Storey Family Investments, LLLP, Bernard Dunstan, and J.R. Dunstan Family LLC. *See* James M. Hull Resp. at 1 (Jun. 6, 2012).

Neither the complaint nor the responses provide a clear indication as to whether or not the LLC elected to be treated as a corporation for federal tax purposes. Considering the low dollar amount at issue, the Commission exercised prosecutorial discretion and dismissed the allegation that the J.R. Dunstan Family LLC made, or that the McLeod Committee accepted, a prohibited corporate contribution in violation of 2 U.S.C. § 441b(a).² *See Heckler v. Chaney*, 420 U.S. 851 (1985).

2. Alleged Excessive In-Kind Contributions

The Complaint claims that the four in-kind contributions for rent that the McLeod Committee reported were made in violation of 2 U.S.C. § 441a(a)(1)(A). Compl. at 2. Section 441a(a)(1)(A) prohibits a person from making a contribution — which includes a gift, subscription, loan, advance, or deposit of money or anything of value for the purpose of influencing a federal election — to a candidate or authorized political committee in any calendar year, which aggregates in excess of \$2,500.³ 2 U.S.C. § 441a(a)(1); 11 C.F.R. § 100.52(a). “Anything of value” includes an in-kind contribution. 11 C.F.R. § 100.52(d)(1). If goods or services are provided at less than the usual and normal charge, the amount of the in-kind

² Because it appears that Margaret Dunstan is the sole member manager of the J.R. Dunstan Family LLC, the McLeod Committee was correct to report the in-kind contributions attributable to J.R. Dunstan Family LLC’s share of the office space as having been made by Margaret Dunstan. *See* 11 C.F.R. § 110.1(g)(4). Additionally, as noted above, one of the other three owners of the office space is a limited liability limited partnership — Barry L. Storey Family Investments, LLLP, of which Barry L. Storey is the president. *See* First Hull Resp. at 2, ¶ 2; Second Hull Resp. at 1; *see also* Committee Resp. at 12 n.5. The Complaint does not allege that the LLLP made an excessive or prohibited contribution to the McLeod Committee, nor does it claim that the McLeod Committee misreported the in-kind contributions from Storey. *See* Compl., generally. But because the McLeod Committee failed to attribute Storey’s in-kind contribution to the LLLP (and any of its other partners, if any) in addition to Storey, the McLeod Committee may have in fact violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 110.1(e). Due to the relatively small amount of contributions involved (\$750), however, the Commission exercised its prosecutorial discretion and dismissed this potential violation.

³ At the relevant time section 441a(a)(1)(A)’s limit stood at \$2,500. That limit has since been adjusted upwards for inflation to \$2,600. *See* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8530-02, 8532 (Feb. 6, 2013).

1 contribution is the difference between the usual and normal charge for the goods or services at
2 the time of the contribution and the amount charged the political committee. *Id.*

3 The Complaint argues that the in-kind contributions were excessive because the monthly
4 value of the office space occupied by the McLeod Committee is not \$1,000 but in excess of
5 \$6,000. Compl. at 2. The Complaint asserts that the McLeod Committee occupies 6,674 square
6 feet of rental space, and that the average annual rental price for comparable office space in the
7 same area is approximately \$11.50 per square-foot, which would make the fair market value of
8 the campaign office space more than \$6,000 per month. *Id.* In support of its calculation of the
9 property's fair market value, the Complaint provided listings of two available rental properties
10 located on the same road as the McLeod Committee headquarters. *Id.*, Ex. B. The Complaint
11 claims that the substantial difference between what the McLeod Committee reported and alleged
12 fair market value would amount to the making and receiving of excessive in-kind contributions.
13 *Id.* at 2.

14 The Respondents, however, convincingly contest the Complainant's valuation. They
15 explain that it is improper to determine the usual and normal charge for the subject property
16 based upon a sample size of two properties that are not comparable in terms of quality and that
17 have been listed but not actually rented. Committee Resp. at 10; First Hull Resp. at 1.
18 According to Respondents, the subject property has been vacant for a number of years and is
19 currently in "poor condition" because of a "number of roof, HVAC, and flooring problems," all
20 of which require "attention and repair prior to and during occupancy." Committee Resp. at 10;
21 First Hull Resp. at 2, ¶¶ 3, 5. As a result, the space rented to the Committee is not comparable in
22 terms of quality to the Complaint's cited sample properties, the Respondents argue. Committee
23 Resp. at 10, Ex. 2; First Hull Resp. at 2-5. Further, the Respondents deny that the McLeod

1 Committee is occupying the full 6,674 square feet as the Complaint alleged; rather they contend
2 that the McLeod Committee occupies approximately 1,000 square feet of the space. Committee
3 Resp. at 12; First Hull Resp. at 2, ¶ 4.

4 The Respondents also provided a detailed analysis of how the property owners
5 determined that \$1,000 per month is a commercially reasonable rental value for the McLeod
6 Committee's office space. *See* First Hull Resp. at 4-5; Committee Resp. at 12-13, Ex. 2 (Decl. of
7 James Hull) at ¶¶ 5-14. The Respondents assert, supported by a sworn declaration, that the
8 \$1,000 per month lease is commercially reasonable because: (1) the rental space is in poor
9 condition; (2) the McLeod Committee repaired the office space at its own expense; (3) the
10 McLeod Committee paid all utilities for the entire building; and (4) the McLeod Committee
11 agreed to the owners' right to terminate its occupancy at any time.⁴ Committee Resp. at 12-13,
12 Ex. 2 at ¶¶ 5-14. The McLeod Committee has provided a declaration from one of the property
13 owners, Hull, who states that he is an expert on the real estate market in Augusta, Georgia. *See*
14 Committee Resp., Ex. 2. Hull says that he has firsthand knowledge of the condition of the
15 property, the circumstances under which a portion of the property was leased to the Committee,
16 and the decision to forgive the rental payments resulting in the in-kind contributions. *Id.* ¶ 4.

17 The property owners state that they agreed that they would not receive rent from the
18 McLeod Committee, but instead would treat the \$1,000 monthly rental fee as an in-kind
19 contribution, provided that the McLeod Committee did not otherwise default on the terms of the

⁴ The property owners state that they have used this same rental technique on many occasions with retail tenants in its shopping centers. *Id.* at 5. They further acknowledge the difficulty of obtaining from market comparables or sales a "paired sales" metric (*e.g.*, comparing similar properties, one having a landlord termination right and the other not having such a termination right). *Id.* They contend, however, that having the unfettered right to terminate is of great benefit to the landlord and detriment to the tenant, and consequently should be reflected in any calculation of "market rent." *Id.*

1 lease, and properly disclosed the unpaid rental payments as in-kind contributions. *Id.* ¶¶ 12, 13.

2 In addition, the McLeod Committee provided with its Response a summary of the building repair
3 expenses it incurred since it began occupancy of the rental office space, which amounts to
4 \$3,290.68. Committee Resp., Ex. 3.

5 The Respondents' detailed explanation of why the usual and normal charge for rent for
6 the property leased by the McLeod Committee is \$1,000 per month, and not in excess of \$6,000
7 per month as claimed by the Complaint, is convincing. The valuation method utilized appears to
8 be commercially reasonable and is supported by a sworn declaration of a member of the
9 ownership group, who facilitated the lease agreement with the McLeod Committee, and who has
10 in excess of 35 years of real estate experience. Moreover, there is no information in this matter
11 suggesting that a non-political committee would have had to pay more than the McLeod
12 Committee did to lease the property in question. *Cf.* MUR 6040 (Rangel) (FGCR) (Cert.,
13 02/24/10) and (Second GCR) (Cert., 10/18/11) (finding RTB where the information suggested
14 the landlord offered less favorable terms to similarly situated non-political committee tenants).
15 Therefore, the Commission found no reason to believe that the property owners or any other
16 respondent made, or that the McLeod Committee accepted, excessive in-kind contributions in the
17 form of office rental space in violation of 2 U.S.C. §§ 441a(a)(1)(A) or 441a(f).